IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 730 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKORE VINODBHAI B

Versus

STATE OF GUJARAT

Appearance:
MR MJ Budhbhatti,with Mr.YN OZA for Petitioner
Mr.BY Mankad,APP for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS
and
MR.JUSTICE C.K.BUCH

Date of decision: 22/06/2000

ORAL JUDGEMENT (Per:K.R.Vyas,J.)

1. The appellant who is convicted for an offence

punishable under section 302 of the IPC and sentenced to suffer R.I. for life in Sessions Case No. 31 of 1990 by the learned Additional Sessions Judge, Ahmedabad Rural, at Mirzapur, Ahmedabad has filed the present appeal.

2. The complainant Kokila, wife of deceased Ashokkumar,in a complaint Ex.14, has stated that her husband had given Rs. 5000/- by way of a loan to the appellant seven years prior to the incident and the appellant had not returned the said amount to her husband and had in fact started quarrel when the amount was demanded prior to one-and-half months from the date of the incident and her husband was beaten. According to the complainant, they came from Kalol to village Kanz two days prior to the incident for the purpose of getting yield from their agricultural field. On the day in question i.e. on 16th October 1989, her husband had gone to the field and as he did not come back to have his lunch, she had gone to the outskirts of the village to inquire about him. At about 12.00 noon, she saw her husband in the company of Babubhai, Rajendrabhai and one Laxmanbhai near the house of the appellant. The appellant, with other accused, were standing on the 'oata' of their house. According to the complainant, as her husband demanded Rs. 5000/- from the appellant, all the accused got excited and the appellant, in fact, went inside his house and came out and uttered "let us get rid of Ashok". The other accused instigated the appellant to kill her husband. The appellant took out a knife from his waste and inflicted a blow on the neck portion of her husband. To save himself from further beating, her husband ran towards Ramji temple. However, he collapsed near Ramji temple and died instantaneously. The Investigating Officer Police Inspector Shri Rathod of Detroj Police Station started investigation after registering the offence against the appellant as well as other three accused and submitted the chargesheet. The learned trial judge framed charge Ex. 3 against the accused persons. To be more precise, the accused no.1 was charged for an offence punishable under section 302 of the IPC while accused nos. 2 to 4 were charged for offences punishable under section 302 read with section 34 of the IPC. The accused no.1 was also charged for an offence punishable under section 135(1) of the Bombay Police Act. At the end of the trial, the learned trial judge convicted the accused no.1 for an offence punishable under section 302 of the IPC and sentenced him to suffer R.I. for life and to pay a fine of Rs. 500/-, i/d to undergo S.I. for three months. The other three accused were acquitted.

2. Mr.Budhbhatti, learned Counsel appearing for the appellant, after taking us through the evidence on record, submitted that the trial court has committed an error in convicting the appellant for an offence punishable under section 302 of the IPC. In the submission of Mr. Budhbhatti, even if the prosecution case is believed in toto, the appellant at the most, can be convicted for an offence punishable under section 304 Part I or Part II of the IPC as the incident happened all of a sudden in a heat of passion and the appellant had given a single blow on the person of the deceased.

3. Mr. Mankad, learned APP, on the other hand, supported the judgment of the trial court in toto.

4. Dr.D.J.Patel, Medical Officer of Municipal Hospital who performed the post-mortem of the deceased Ashokkumar on 16th October 1989, found the following injuries:-

"Incised wound (stab) 2"x1"x deep horizontal in globe over manubrium of sternum edges inverted, both angles of wound clear; behind this wound sharply cut i.e.. ascending angle, trachea, oesophagus etc."

He has stated that the said injury is possible by muddamal knife. Dr. Patel has opined that the deceased died due to shock and haemorrage due to injury in column 17 caused by a sharp cutting weapon. Thus, in view of the evidence of Dr. Patel, it is clear that the deceased died a homicidal death.

5. In order to bring home the charge against the appellant, the prosecution has mainly relied on the evidence of the complainant Kokilaben Ex. 30,Babubhai Ex. 15, Rameshkumar Amrutkumar Ex. 24 and Rajendra Thakar Ex. 27 who are the eye witnesses. Frankly speaking, we are not impressed by the evidence of the complainant Kokila and Ramesh Amrutlal. In our opinion, they are forced to be eye witnesses as their presence at the time of occurrence of the incident appear to be doubtful.

The complainant Kokila has tried to involve all the four accused in the commission of crime by stating that all the accused were standing at their house when her husband demanded Rs. 5000/- from the appellant. According to Kokila, the appellant went inside his house and came out with a knife and rest of the accused instigated the appellant to kill her husband. She has

further stated that the appellant ran after her husband with knife and he was prevented by Babubhai as well as Laxmanbhai. However, the appellant released himself and caught hold of her husband and inflicted knife blow near the neck portion. The blood was oozing out and, therefore, her husband pressed his handkerchief on the wound. Her husband was brought by Laxman as well as Babubhai towards their house. However,he collapsed near the Ramji temple and died instantaneously. She was taken by Rajendra on Luna to Detroj Police Station where she registered her complaint. Now, she has given a complete go bye to this story in her cross examination. She has admitted in the cross examination that she has not stated in the complaint that she had gone to the outskirts of the village and was waiting for her husband and that her husband was coming from the field to the place where she was waiting. She has also admitted that she has not stated in the complaint that the distance was about 15 steps. She has further admitted that there was a distance of about 15 steps from the place where she was standing and the place where her husband was brought by Babubhai Laxmanbhai. She has also admitted that she has not stated in the complaint that the appellant has stated that he was not ready to pay the amount. She has admitted that there were heated arguments between her husband and the appellant. She has admitted that the appellant took out a knife from his pant. She has admitted that the appellant had not gone inside the house and came out with a knife and the said fact has not been stated in the complaint. She has also admitted that she had not stated that the appellant had chased her husband with a knife nor had she stated that Laxman and Babubhai caught hold of the appellant. She has also admitted that she has not stated in the complaint that her husband collapsed near the Ramji temple when he was brought by Laxman and Babubhai. Finally, she has also admitted that she is not in a position to state as to who was present when her husband demanded money from the accused no.2 prior to one-and-half months from the date of the incident and in any case, she was not present.

Reading the evidence of complainant Kokila, as stated above, it is clear that she has improved her entire version which is not there in the complaint. Reading her evidence, it is clear that the appellant had not gone inside the house for the purpose of bringing knife and after heated arguments, the appellant inflicted knife blow near the neck portion of the deceased. Even the previous incident which took place one-and-half months back regarding demand of money by the deceased from the appellant becomes doubtful as she was not

present. In any case, since the complainant has made many improvements by materially changing the original version, we feel that her evidence does not inspire confidence.

6. Similarly, in our opinion, the evidence of Ramesh Amrutlal, who poses to be an eye witness,is required to be ignored. In our opinion, the said witness belongs to another village i.e. village Bhasaria, which is quite far off from village Kanz. This witness was desirous of purchasing a cow and, therefore, he had come to village Kanz and met one Jagdishbhai. Without purchasing cow,he had come to the bus stand for returning to his village. While waiting for the bus, near the 'oata' of temple, he saw the incident in question. In view of the fact that his statement was recorded after four to five days and he had not informed about the incident immediately to anybody including police, we may not give any importance to the evidence of this witness. Suffice it to say that his evidence does not inspire any confidence.

7. In our opinion, the evidence of Babubhai Chunilal, Ex. 15 and to some extent, the evidence of Rajendra Ex. 27, is relevant. Babubhai, in fact, had accompanied the deceased to his field and after returning from the field at about 12.00 noon, one Laxmanji also joined him. Those three persons had thereafter gone to the shop of PW Rajendra and after taking tea, they left the shop of Rajendra. Rajendra also closed the shop and was following them. According to Babubhai, when they reached near the house of the appellant, deceased demanded money and thereafter hot exchange of words took place. The appellant caught hold of the bushshirt of the deceased and took out a knife. According to this witness, he and Laxman intervened and caught hold of the appellant. However, the appellant got himself released and ran after the deceased and inflicted a knife blow. This witness has been cross examined at length. However, nothing substantial has been brought out. Except certain infirmities, he has remained consistent in his evidence. He being the friend of the deceased who had accompanied the deceased right from the morning till the incident which happened in the noon, his evidence appears to be quite natural and trustworthy.

8. Witness Rajendra who was following the deceased Babubhai and Laxman keeping a distance of 25 to 30 steps has also corroborated the say of Babubhai regarding the part played by the appellant in causing injury to the deceased. True, as admitted by him, the deceased was his cousin brother and even though he took complainant Kokila

to Detroj Police Station for the purpose of registering complaint, without informing the police about the incident, immediately he left the police station and came to his village. These are certain facts which show his unnatural conduct. However, his indifferent attitude will not come in the way of the prosecution case regarding his presence at the time of the incident. Thus, in view of the evidence of eye witnesses and more particularly, the evidence of Babubhai as well as Rajendra, we are of the view that their presence with the deceased at the time of incident is quite natural and there is no reason to doubt the same. If their presence is believed, the obvious conclusion is that the appellant took out a knife from his pant and inflicted a single blow on the portion of neck of the deceased. It is also clear from the evidence of the prosecution witnesses that prior to the incident, there was hot exchange of words between the deceased and the appellant. It further appears that the appellant was excited and was required to be prevented from causing any bodily injury on the person of the deceased and in fact the PW Babubhai and one Laxman caught hold of him. However, nothing prevented the appellant from causing injury to the deceased and for that, as per the evidence on record, he chased the deceased by covering the distance of 15 steps.

9. With this evidence on record, the question arises as to whether the act on the part of the appellant amounts to causing a murder or a culpable homicide not amounting to murder. In our opinion, the manner in which the unfortunate incident had taken place, the appellant cannot be held liable for causing murder. The incident had happened all of a sudden as after having hot exchange of words, the appellant took out a knife and inflicted a single blow on the neck portion of the deceased. Therefore, it is a clear case of an exception under section 300 of the IPC. Had there been an intention on the part of the appellant to commit murder of the deceased, he could have inflicted more than one blow on the deceased. It is unfortunate that the blow landed on the front side of the neck portion without any force. In any case, it cannot be denied that there was no intention on the part of the appellant of causing bodily injury to the deceased which is likely to cause death. In this view of the matter, we feel that the appellant has committed an offence punishable under section 304 Part I of the IPC. In any case, the appellant cannot be held liable for an offence punishable under section 302 of the IPC.

10. In the result, the appeal is partly allowed. The

judgment and order of conviction passed against the appellant for an offence punishable under section 302 of IPC is set aside and instead, we convict the appellant for an offence punishable under section 304 Part I of the IPC and impose a sentence to suffer R.I. for ten years and to pay a fine of Rs. 500/-, i/d to undergo S.I. for three months. Order accordingly.

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